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CITATIONS

99040—49——1

In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 25

ELMER W. HENDERSON; APPELLANT

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND SOUTHERN RAILWAY COMPANY, APPELLEES

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

MAY IT PLEASE THE COURT:

The undersigned, a Member of the Bar of this Honorable Court and of the Committee on the Judiciary of the House of Representatives of the United States, at the suggestion of other Members of that Committee, respectfully moves this Honorable Court for leave to file a brief and participate in the oral argument of the above entitled cause.

SAM HOBBS,
As Amicus Curiae.

OCTOBER 21, 1949.

In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 25

ELMER W. HENDERSON, APPELLANT

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND SOUTHERN RAILWAY COMPANY, APPELLEES

NOVEMBER 7, 1949.

The Court today entered the following order in the case of *Henderson* v. *United States, et al.*, No. 25, October Term, 1949:

"The motion of Sam Hobbs for leave to file a brief as *amicus curiae* is granted. Mr. Justice Douglas took no part in the consideration or decision of this application."

PRELIMINARY STATEMENT

The law of this case is clearly and succinctly stated in the briefs for the Interstate Commerce Commission and for Southern Railway Company.

The Committee on the Judiciary of the House of Representatives of the United States has never taken a contrary position; nor has the Congress or the Supreme Court of the United States.

The brief nominally filed for the United States is not a brief for that appellee and assumes the opposite position from that taken by those representing that appellee in the lower court.

This amicus curiae adopts the briefs of the attorneys for the other two appellees; and opposes the brief nominally filed for the United States.

QUESTION STATED

The sole question for decision on this appeal is whether or not the appellee carrier's rules regulating its dining car service, which became effective March 1, 1946, requiring equal but separate accommodations for white and colored passengers, subject the appellant to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Appellant won his case in the lower court when he attacked a former rule of the carrier; so only the rules which became effective March 1, 1946, are attacked in this case and involved in this appeal.

Or, as stated in the brief for Southern Railway Company, on Page 12, under the caption "The Question Presented for Decision",

> "The appeal brings to this Court for decision the question whether racial segregation of interstate passengers is forbidden by any provision of the Federal Constitution, the Interstate Commerce Act

or any other Act of Congress, so long as there is equality of treatment of those of different races. The question arises under the rule of the Railway whereby the space in its dining cars is divided: one portion for the exclusive use of Negro passengers and the remaining part for the exclusive use of white passengers. It is the operation of the rule of the Railway that gives rise to the question for decision; not the segregation statute of the State of Virginia in which state the incident here in question occurred."

SUMMARY OF ARGUMENT

It is respectfully submitted that the pertinent rules of the Southern Railway Company are in accordance with the Supreme law of the land as declared by the Supreme Court and the lower courts. Not only so, but those rules are wise, for the best interests of all the people affected, and in accord with the highest ethical standard.

The purpose of regulation is not utterly to prohibit. The Southern Railway Company, to all practical intents, operates only in that region where anything more than is required by the rules here under attack would render its attempt to operate its railway system absurd. To adopt the contention of Appellant would be the kiss of death and render operation of the railway impossible.

These rules apply to all and should be obeyed by every passenger.

In Holy Writ we read: "Wherefore if meat make my brother to offend I will eat no flesh while the world standeth, lest I make my brother to offend." 1 Corinthians 8:13. Why should not both white and colored passengers in interstate commerce be willing to rise to the height of that highest ethical standard? Why should any passenger be unwilling to give that much consideration to his fellow passengers?

The Constitution of the United States granted complete and exclusive power to regulate interstate commerce to "The Congress". In the exercise of that power the Congress has repeatedly refused to require more than the rules in question indicate.

ARGUMENT

Judge Coleman, in writing the opinion of the majority in the lower court in this case said:

> ". . . (1) Racial segregation of interstate passengers is not forbidden by any provision of the Federal Constitution, the Interstate Commerce Act or any other Act of Congress as long as there is no real inequality of treatment of those of different races. (2) Allotment of seats in interstate dining cars does not per se spell such inequality as long as such allotment, accompanied by equality of meal service is made and is kept proportionately fair. This necessity was recognized by the Commission in its report on which the order now

approved by us is based, when it said (269 I. C. C. 73, at page 76): 'Should the indicated trend continue, substantial equality of treatment may require the reservation of additional accommodations for Negroes in the future'. To the argument that proportionate allotment of tables is only just and equitable so long as persons may find seats at a table assigned to their respective races, and fails to meet the equality test when there is any empty seat in the dining car which a person of either race is forbidden to occupy, suffice it to say that this argument denies the very premise from which we start, namely, that racial segregation is not, per se, unconstitutional. Since this is true, we fail to see that a situation such as that just referred to produces a result any more unjust or inequitable from a legal approach—which must be this Court's approach to the question,—than the no doubt common situation where both white and colored passengers may be kept waiting to secure seats at tables allotted to their respective races, because, for the time being, every seat in the dining car may be occupied.

"For the reasons herein set forth the complaint must be dismissed." (R. 260.)

To the same effect is each of the six decisions cited and referred to in the Index to this brief and in the Simmons case it is said:

"It must be repeated and steadily borne in mind that the power to regulate inter-

state commerce is vested in Congress. This power Congress has, within certain limits, delegated to the Interstate Commerce Commission. To what limits the powers of this latter body extend need not be inquired into. The fact remains that neither Congress nor any agency created by it has sought to impose any regulation dealing with the separation of passengers in interstate commerce. The fact that such separation has long been enforced in a number of states by custom and by the rules of common carriers operating in such states is a matter of public knowledge of which the members of Congress are fully aware. In fact, although efforts have been made over some years to induce Congress to enact legislation on this subject, it has consistently refused to attempt such regulation. There can be no other inference than that Congress has thought it wise and proper that the matter should be left for determination to such reasonable rules as the carriers might themselves adopt and that it considered that rules providing for the segregation of passengers in those sections where they were applied were reasonable ones. By its refusal to nullify the practices and regulations of these carriers in respect to the separation of passengers, Congress has by the strongest implication given its approval to them. This is a field of Congressional duty and responsibility. This court cannot invade it and, by usurp-

ing the powers of Congress, lay down rules by which this defendant must guide the operation of its business—rules which Congress, in the exercise of power specifically and solely entrusted to it, has refused to lay down." *Simmons* v. *Atlantic Greyhound Corp.*, W. Dist., Virginia, decided December 30, 1947, 75 F. Supp. 166.

Fourteen times the House has voted against anti-segregation proposals.

The views taken by the Committee are amply borne out by speeches of Members of the House, as evidenced by their reproduction as Appendix A of this brief.

The briefs for the Interstate Commerce Commission and Southern Railway Company leave little to say. All pertinent cases, the Constitution, Statutes, history of this case, and the rules made by the railway have been cited and quoted. To prolong this argument would be but repetitious.

But in behalf of "The Congress" whose silence has been thunderous; whose Counsel in the instant case has abandoned its defense and espoused the alleged cause of its adversary; for "The Congress", to whom alone has been granted by the Constitution the power to regulate interstate travel; it must be said that the trust has been kept sacredly, and administered faithfully, for the best interests of all! "The Congress" confidently awaits the decision of this appeal, and the verdict of history!

CONCLUSION

I respectfully submit that this case should be affirmed.

Respectfully submitted.

SAM HOBBS,
Amicus Curiae.

I hereby certify that a copy of this brief has been served upon counsel for the appellant and upon the Solicitor General of the United States.

SAM HOBBS,
Amicus Curiae.

APPENDIX A

THE HENDERSON CASE

Mr. GOSSETT. Mr. Speaker, I hope I may be pardoned for name calling, seeming exaggeration, and dealing in generalities. But this is a short speech, and the provocation for making it is great.

A new, little publicized, and dangerous assault is being made upon the dignity, decency, and security of this Republic. The Department of Justice, together with the CIO, is going before the Supreme Court in the Henderson case and is asking the Court to overrule the well-established law of this country and to declare the "separate but equal" facilities doctrine to be unlawful. The Department of Justice is acting in opposition to the Interstate Commerce Commission. The Department of Justice is asking the Supreme Court for antisocial legislation by judicial fiat. If the Supreme Court holds with the Department of Justice, and against the Interstate Commerce Commission, we will have, in effect, outlawed all forms of segregation. Racial pride and purity are virtues, not vices. The position taken by the Department of Justice would eventually mongrelize and bastardize all races within this country to the degradation, shame, and destruction of all races. This assault is launched either through malice or ignorance. Those responsible are either villains or fools.

Could it be that the great Department of Justice is becoming a political adjunct of those who would pander to ignorance and prejudice in order to purchase votes at the sacrifice of principles?

In the first place, the Department of Justice has no business intervening in the Henderson case. In the second place, it is an insult to the Supreme Court to openly seek to wring from it social legislation instead of sound judicial decision. Let us hope the Court will live up to its honorable traditions and will not be a party to nefarious schemes that would undermine and destroy this Nation.

THE HENDERSON CASE

Mr. COLMER. Mr. Speaker, and Members of the House, I hope you will pardon me in this deviation from my usual conduct here with reference to the matter of making 1-minute speeches. I am provoked into this deviation by an editorial which appeared in the morning Washington Post attempting to justify the unusual and inconsistent conduct of the Department of Justice in interfering in the case now pending in the Supreme Court between a publicity-seeking Negro, on the one hand, and the Interstate Commerce Commission, on the other.

The decision of the Interstate Commerce Commission holding that the Southern Railroad did not violate its regulation in the Henderson case was upheld by a Federal district court requiring passengers to be segregated, but providing for equal accommodation in the railway's dining cars.

If I understand the duty of the Department of Justice, that duty requires that the Department of Justice enter a case, if it enters at all, on the side of the Interstate Commerce Commission and the Federal courts; but, substantiating the charge that the Justice Department has become the political arm of the administration's political philosophy, we find it injecting its strong arm into this case in an effort to have the highest Court of the land reverse itself and the law of the land in order to carry out the political philosophy of the administration in racial matters.

More than that, Mr. Speaker, we have here a spectacle of the Department of Justice attempting to persuade the Supreme Court, by judicial fiat, to decree what the Congress, the legislative body of the Government, has refused to legislate.

This is but another evidence of the bold and brazen effort of those now in charge of our Government to obtain by indirection what Congress has refused to do. For, if the Court yields to this political interference of the Department of Justice, and upholds its views, segregation in all forms, in our hotels, in our picture shows, in all public and private places, is at an end, another cherished right of the individual—choosing his own associates—is denied.

It is indeed alarming in this connection, Mr. Speaker, to note that the Department of Justice, which is supposedly charged with upholding our form of government, and opposing such modern isms as communism, sees fit to cite statements made by Soviet representatives, in support of the Russian effort to break down segregation in this

country, as it does on page 61 of its brief before the Court.

It is unthinkable, the Washington Post to the contrary notwithstanding, that the members of the Supreme Court, regardless of their own varying degrees of so-called liberality, will accede to this type of political propaganda. I rather believe that that body will adhere to the view that this Government is composed of three independent departments, and that legislation in social, as well as other human relations, is a matter entirely within the province of the Congress.

HENDERSON AGAINST INTERSTATE COMMERCE COMMISSION

Mr. BRYSON. Mr. Speaker, Members of the House, particularly those of the legal profession, will be especially interested in a case now pending before the United States Supreme Court entitled "Henderson Against Interstate Commerce Commission and Others," docketed as No. 25.

From a cursory reading of the pleadings, it readily appears that an intentional attempt is being made to bypass the Congress of the United States and have a judge-made law. It seems that there are those who have no hesitancy in deliberately violating the specific constitutional provisions establishing the three distinct branches of our Government.

No possible barrier to segregation in interstate travel can be found in our Constitution. Repeat-

edly the courts have held that separate but equal facilities in travel are all that may be required. The purpose of the pending case is to seek a judicial determination to the effect that only the same facilities will fully meet the issue. Surely the Court will never adopt the extreme views now sought to be established as the law of the land. Let it be remembered that the Congress itself, the only lawmaking agency in the Government, has consistently refused to adopt the radical, unreasonable view taken in the incident case.

Should this new doctrine on segregation be allowed, it might well follow that all efforts to preserve any separation of the races, including marriage, shall be thwarted. Surely those who continue to harangue, harass, and divide us know not what they do.

THE HENDERSON CASE

Mr. HERLONG. Mr. Speaker, seldom during this first session of the Eighty-first Congress have I risen to give voice to my feelings on matters of the public interest. Rather, I have felt that I could accomplish more and contribute just as much by listening and learning from those who have become grizzled and gray through years of experience and whose wisdom I recognize and respect. The action of the Department of Justice, representing the United States as codefendant in the Henderson case in not only declining to defend the case but actively participating in

an attempt to reverse the judgment of a specially constituted District Court in and for the District of Maryland, however, prompts me to add my voice to those of my distinguished colleagues who feel that such action is beyond the realm of precedent or reason. I have carefully read the brief filed by the Solicitor General, Mr. Perlman, on behalf of the United States, and as a Member of Congress I cannot but resent the attempt of the Justice Department to ask the highest court in our land to usurp legislative functions and write new law to take the place of the regularly enacted legislation of this Congress. This Congress has repeatedly, during this session, expressed itself on the question of segregation. One of the more notable instances was when an attempt was made to eliminate segregation in the housing bill. This proposal was overwhelmingly defeated. Other such attempts during this session have also been defeated.

I could discuss at great length the practical and humane arguments in favor of segregation in the Southland; and feel confident that with a fair opportunity to present evidence to people whose minds are not closed through fear of loss of political support, I could show the impracticability of handling this problem in the South at this time in a manner different than it is now handled. I could show through the testimony of many hundreds of Negroes themselves that they not only do not desire, but bitterly resent this interference by outsiders who have nothing but misinformation and outright misrepresentation and no personal knowledge whatsoever of the true conditions existing in the Southland. I could tell

you in detail how professional troublemakers come into the South, and on the pretext of securing information and writing eyewitness news stories, so grossly distort the real facts as to make them unrecognizable when they appear in print.

As an example of how these people operate and attempt to poison the minds of the people in the North against the South, there was a case in my home county recently in which three Negro boys were convicted of raping a young bride. An attempt was made in some of the northern papers to give the wrong impression of what actually happened by reporting that the defendants were convicted by an all-white jury. These subsidized specialists in scuttling the South did not say in their story that the prosecution on behalf of the State of Florida in that case went far beyond the requirements of the law in insuring to the defendants a fair trial. They did not say that there were Negroes on the jury panel in the same proportion as there were Negro registered voters, and most of them are registered voters and vote in that county; they did not say that when the name of a Negro juror was drawn he would be excused by the defense—not the prosecution but the defense—on a peremptory challenge on some frivolous ground, so that they would be able to say after the case was over that it was tried by an all-white jury; they did not say in the story that the State attorney excused, on peremptory challenges, several good white jurors in an attempt to get to Negro jurors, and found whenever he did get to them that the defense did not want them to serve.

After the trial was over and the three defendants were convicted, the jury recommended mercy for one of the defendants and he was sentenced to life imprisonment. The other two received no such recommendation. Even though the prosecution had tried all the cases together, the defense then claimed that the two who were convicted without recommendation of mercy did not receive a fair trial. But they agreed that the one who received a recommendation of mercy did receive a fair trial; these stories have not said that after the trial one of these defendants asked to talk with the officers and in a voluntary statement, which was recorded, stated, in effect, that he was more than pleased with the outcome of the case, that all of them were guilty, that he had told a false story at the trial because the defense attorneys had told him that his only chance of getting off would be to lie about the true facts; as a matter of fact, a greater effort was made on the part of the defense attorneys to inject a discrimination issue into the trial than there was to actually defend the case.

This practice of distorting the facts has been going on for years. This is not the first time that it has happened. But the people in the South have just listened and ignored them, choosing to consider the source from which they came. But when the Solicitor General's office injects itself in an effort to give strength and dignity to this type of activity, then it is no longer a trivial matter. It is time to let the people everywhere know the true facts.

But as important as the segregation question is, this Henderson case strikes even deeper than

that. Here is the result of an attempt, inspired and prompted by these same talented triflers with the truth, to persuade the Solicitor General's office to endorse the transfer of the legislative functions of the Congress over to the courts. The Congress has repeatedly spoken to the contrary. In the brief of the Solicitor General's Department they admit that even precedent in the courts is against their position, but they urge that the precedent, the decision in the case of Plessy against Ferguson, has been determined erroneously and that the doctrine of that case should now be reexamined and overruled. As you know, the customary procedure is that Congress enacts legislation. If it is not clear or there is any question about the intent of Congress, it goes to the courts for interpretation. If the interpretation follows the true intent of the Congress it remains the law of the land until changed by the Congress. If the interpretation goes afield from the intent of the Congress, further clarifying legislation is presented so that the real intent of the Congress is the law. Several times during this session we have been asked to vote on measures designed to correct a decision of the Supreme Court in order to insure that the true intent of Congress is actually the law. This precedent, which they desire now to have overruled, was decided in 1895. Since that time many Congresses have met and adjourned. It seems to me that if the Supreme Court had erroneously interpreted the intent of Congress, there has been ample opportunity in these 54 years to clearly set out the real intent by statutory law. The reason

it has not been done is simply because the decision was correct, the opinion of the Solicitor General to the contrary notwithstanding.

I hope this Congress will jealously guard its policy-making prerogative. Our legislative authority should not be usurped.

SEGREGATION

Mr. WILLIAMS. Mr. Speaker, I shall not use all of my time. I merely wish to add my thoughts to the remarks of the distinguished gentleman from Florida, who preceded me. To do justice to the subject would take hours.

Mr. Speaker, I have always understood that our Government was composed of three branches, with certain specific powers delegated to each by the Constitution. It has been my belief that the duty of the legislative branch was to enact and repeal laws, and the duty of the judicial branch to review and pass upon the constitutionality of legislation enacted by the legislative branch.

This belief, apparently, is not held by the Justice Department. For it is today asking the Supreme Court to assume legislative powers and authority not granted to it under the Constitution.

The Justice Department, in the so-called Henderson case, is asking the Supreme Court to legislate judicially that which the House and the Senate have consistently refused to act upon.

The Justice Department has asked the Supreme Court to set aside its age-old, tried and true, "separate but equal" theory in regard to racial segregation in favor of complete abolition of segregation.

I have always understood it to be the duty of the Justice Department to defend the orders of the Interstate Commerce Commission—the defendant in this case—as well as to represent other agencies of Government in matters of litigation.

In complete disregard of its duties, the Justice Department has organized its legal facilities in a fight against a companion agency in the Government, rather than defend it. They seem to have contracted the same "minority" disease that has swept the world ever since Russian communism became a world philosophy, and Russia became a world power. The Justice Department has completely surrendered to the Communists, the radicals, the fellow travelers, the pinks, and the punks.

Who are those who stand behind the Justice Department in this suit? Are they the great mass of the American people? Or are they blocs of selfish interest groups intent upon forcing their will upon the American people, whether they like it or not?

Briefs have been filed in this case on the side of the appellant by the CIO—which hopes to use the Negro as a club with which to whip the American people into submission; the National Association for the Advancement of Colored People—a radical organization which for years has directed its activities toward stirring up racial strife in the North as well as the South; the AVC—an off-brand pink and Communist flavored alleged veterans' organization which has caused nothing but trouble since it was organized; and the National Lawyers' Guild—another red outfit.

There is no demand from the Negroes of the South for this kind of ruling—that is evident.

Yet we know that these Communist organizations always point to the southern Negro as the one who is suffering from segregation. There is no doubt about the part that politics is playing in this suit, and I hope that the Court will not allow itself to be degraded to the level on which the Justice Department seeks to place it. There is no demand from the American Bar Association for the outlawing of segregation; there is no demand from the bona fide, reputable veterans' organizations for such a ruling. There is no demand from Congress—it has had the opportunity for years to outlaw segregation legally and constitutionally. There is no demand in the Constitution of the United States for the abolition of segregation.

The Justice Department knows this—they also cannot be blind to the disastrous effects upon our Nation that would occur from the abolition of segregation. Yet they are willing to barter the peace, good will, and welfare of our people for the miserable political advantage which might accrue from their action.

Listen to this, taken from the brief of the Justice Department in this case:

> What we seek is not justice under law as it is.
>
> What we seek is justice to which law, in its making, should conform.

Where is the authority of the Supreme Court to interpret the law—not on the basis of what it is, or what is intended to be—but rather to draw from the law what is not in it, and make it conform to what they think should be in it?

The present law on the subject of segregation can be changed under the Constitution only by

Congress, or the people. The Supreme Court cannot make laws, or change laws—the Justice Department should know that.

A reading of the brief filed by the Justice Department in this case will show that the authorities cited therein are not legal authorities, but are from propaganda leaflets, lay commercial publications—and, particularly Russian and Communist books and periodicals. The kind of brief filed by the Justice Department in this case would insult the intelligence of any backwoods justice of the peace. The Supreme Court should resent this assault upon their integrity, ability, and intelligence.

Here are a few, but typical, of the authorities cited by the Justice Department in support of their fantastic contentions:

First. Native Son, a fictional novel by Richard Wright, a Chicago Negro.

Second. Caste and Class in a Southern Town—another lay article, making a prejudiced, biased attack upon the decent and God-fearing people of the South.

Third. The Negro Ghetto, by Weaver, enough said.

Fourth. Negroes in Brazil, by Pearson.

Fifth. Can the Negro Hold His Job?—from a bulletin of the NAACP, one of the uninvited meddling participants in this case.

Sixth. The Bolshevik.

Seventh. Nationalism—Tool of Imperialist Reaction, written in Russia by a Communist writer named Frantsov.

Eighth. The Soviet Representative to the United Nations, who is cited many times throughout the brief.

Ninth. The Literary Gazette, an official publication of the United States of Soviet Russia.

Tenth. An American Dilemma, by Myrdal, and so forth and so on.

In filing this brief, the Justice Department has sunk to the lowest levels in history. They are being cajoled into a violation of their oaths by monstrous groups intent upon destroying our Democratic form of government, our people and our Nation.

The Constitution of the United States very carefully avoided any reference to segregation. In the fourteenth amendment, giving the Negroes equal rights with whites, there is no mention of segregation, and it cannot be inferred that it was intended that segregation should be abolished. We know that granting equal facilities and equal opportunities to Negroes is right and necessary in order to meet the requirements of democracy. But must we amalgamate our people in order to meet those needs? To allow such a thing to happen would be to betray our country and its glorious history. We cannot allow these power seekers to mongrelize our people through a forced amalgamation of the races. To do that would bring on national suicide, as it did for Greece, for Rome, for Egypt, and for all of the other great empires of the past.

Why was mention of segregation not made in the Constitution? Listen to the words of Thomas Jefferson:

> Nothing is more certainly written in the book of fate than that these people—

Meaning the Negroes—

> are to be free; or is it less certain that the two races, equally free, cannot live in the same government.

Perhaps Jefferson went further along those lines than we should go today. But he did reflect the thinking of the writers of our Constitution, who recognized the incontrovertible fact that a mongrel America cannot live in peace; nor can a mongrel America hold the respect of the world.

Abraham Lincoln, champion of the Negro, admitted—and I quote:

> A separation of the races is the only perfect preventive of amalgamation; but as an immediate separation is impossible, then the next best thing is to keep them apart where they are not already together.

Segregation is admittedly the only solution to the Negro problem, if such a problem exists. This Congress can pass laws from now until doomsday, and the Supreme Court can render limitless decisions outlawing segregation, and attempting to force upon both white and black an integral society. But until such time as people of both races are willing to intermingle socially, these laws and decrees could and would be of no value whatsoever. On the other hand, they could result only in bloodshed and strife.

Do the Negroes want to intermingle socially with the whites? Certainly not in my section of the country. If they did, then, of course, there would be no Harlem in New York, and no South Side in Chicago. Joe Louis would not be opening his exclusive colored restaurant in Detroit next week.

It was a Negro—the greatest of them all—who uttered the philosophy which has been followed by our courts, our Congress, and our people down through the years. The words of Booker T. Washington will live as long as civilization itself:

> In all things which are purely social, we can be as separate as the fingers; yet one as the hand in all things essential to mutual progress.

Segregation has obtained in this country for so long a time that it has become an established tradition or institution. It has been approved, not only by the people who established it, but by the courts and the Congress. Suddenly, the highest tribunal in the land is called upon to sweep away the bulwark existing in our social and political orbit. They are being asked to deny to our people the fundamental constitutional right of a continuation of this established, approved, and successful practice.

America has grown great and all powerful under our time-honored social and political system. There is a reason for this: The people have an inherent right to shape their own respective destinies. The architects of our dual system of constitutional government purposefully retained in the people themselves, through their duly elected representatives, the right to legislate laws, repeal laws, and inaugurate policies for the general welfare of all the people. Nowhere can that right and authority be found except in the legislative—and not the judicial—branch of our Government.

The philosophy and practice of segregation had its origin in the teachings of the Apostle Paul, in his ministry to the Jews, Greeks, gentiles, Romans, and all peoples everywhere. His doctrine is found recorded in the seventeenth chapter of Acts, twenty-sixth verse:

> And hath made of one blood all nations of men for to dwell on all the face of the earth, and hath determined the times before appointed, and the bounds of their habitation.

I am confident that the Supreme Court will promptly affirm the decision of the lower court. To do otherwise, would be to encroach upon the rights granted to Congress under the Constitution of the United States.

THE HENDERSON CASE

Mr. DAVIS of Georgia. Mr. Speaker, I have noted with interest the remarks made in recent days on the floor of the House by Messrs. Gossett, of Texas; Colmer, of Mississippi; Herlong, of Florida; and Williams, of Mississippi, calling attention to a brief filed by the Solicitor General of the United States in the case of Henderson against the Interstate Commerce Commission et al., pending in the Supreme Court of the United States.

There is nothing unusual about the case in itself. It does not present a new issue. It is one of many cases in which attacks in the past have been made in the courts upon segregation laws—an effort to have the courts substitute for existing law a new provision which is not law, and which

cannot become law under our system of government, unless appropriate and constitutional action is taken by the legislative department of our Government, upon whom the responsibility rests to make legislative changes; namely, the Congress of the United States.

The courts have consistently refused to assume lawmaking powers in connection with this question.

The circumstance connected with the filing of this brief which is unusual is the fact that the Solicitor General of the United States has permitted radical minority pressure groups to use him and the prestige of his office in their conniving efforts to pressure the United States Supreme Court into changing the law.

Briefly stated this case originated when the plaintiff, a field representative of the so-called Fair Employment Practices Commission, petitioned the Interstate Commerce Commission to require a railroad to completely eliminate segregation of white and colored passengers in its dining car.

The Interstate Commerce Commission dismissed the complaint. A three-judge district court held that the existing regulations were prejudicial, in that certain tables were only conditionally reserved for colored passengers, whereas all other tables in the car were unconditionally reserved for white passengers. The case then was remanded for further proceedings not in conflict with that ruling.

Pursuant to that ruling the regulations were changed to provide for tables to be reserved un-

conditionally for colored passengers just as tables were reserved unconditionally for white passengers. The seats unconditionally reserved for colored were almost twice the percentage of colored travel on the railroad as compared with the proportionate percentage reserved for white passengers.

That regulation was upheld by the Interstate Commerce Commission and by the district court of the United States, and was appealed by the plaintiff to the Supreme Court.

The law in question is established law, recognized, followed, and complied with for many years. It was applied to the instant case and upheld by the proper agency of the Government, the Interstate Commerce Commission, whose ruling was confirmed by the district court of the United States.

The action of the Solicitor General in this case is nothing more nor less than an attempt to aid the plaintiff in this case in trying to overturn the present established law, and to substitute therefor as law a new and radical doctrine, through the process of judicial legislation.

Contrary to the position and to the action of the defendant, the Interstate Commerce Commission, this brief undertakes to confess judgment in the case, and to aid the efforts of the plaintiff and the radical groups associated with him in an effort to nullify the functions of Congress and to secure a change in long-established law by judicial legislation.

The Solicitor General, with no authority to do so, undertakes to announce the policy of the United States by stating:

> Since the United States is of the view, however, that the order of the Interstate Commerce Commission is invalid, this brief sets forth the grounds upon which it is submitted that the judgment of the district court is erroneous and should be reversed.

The Solicitor General does not have the authority to frame or to announce the policy of the United States with reference to legislative matters. These functions are performed by the legislative department of the Government; namely, the Congress. In another portion of the brief the effort is made to have the Supreme Court discard existing law, a function which clearly does not belong either to the executive or judicial department, but is a function and responsibility to be exercised, if at all, by the legislative department, the Congress. The portion referred to is as follows:

> If this Court should conclude that the issues presented by this case cannot be considered without reference to the "separate but equal" doctrine, the Government respectfully urges that, in the half century which has elapsed since it was first promulgated, the legal and factual assumptions upon which that doctrine rests have been undermined and refuted. The "separate but equal" doctrine should now be overruled and discarded.

That is what I would consider a brazen request. The Congress of the United States is now in session. There are bills pending before Congress

involving the precise question in this case; namely, abolition of segregation. The Congress is the proper arm of Government to enact such legislation, or to refuse to enact it. The Congress has during this present session, on more than one occasion, specifically refused to change the segregation laws, and it is nothing less than brazen effrontery for the Solicitor General to ask the judicial department of the Government to overrule and discard the law which now exists, which Congress has refused to do.

The so-called brief, in its list of citations, contains almost 2 pages of references to such things as Black Metropolis, by Drake and Caton; Psychodynamic Factors in Racial Relations, by McLean; Negroes in Brazil, by Pearson; and Color, Class, and Personality, by Southerland, to support the radical position adopted. The effort of the Solicitor General and his two assistants to speak for the United States, and the Government, in this matter reminds me of the three tailors of Tooley Street who called themselves, "We, the people of England—."

Others joining in this outrageous attempt to high pressure the Supreme Court, and to bypass Congress, in the effort to secure "judicial legislation," are the radical, discredited National Association for the Advancement of Colored People, the American Veterans Committee, equally as radical and equally as much a stench in the nostrils of good Americans, and the CIO, some of whose racketeer leaders have violently resisted all efforts of the Congress and the American people to force that organization to

purge itself of admitted and acknowledged communistic members and influence. All three of these groups—the NAACP, the AVC, and the CIO—are ardent advocates of that unconstitutional, radical monstrosity known as the FEPC bill.

The Congress has steadfastly declined to pass that bill, although these radical groups have clamored loudly and insistently for it. Many States of the Union have likewise refused to pass it. If this conniving conspiracy, aided and abetted by the Solicitor General, should be able to secure this piece of "judicial legislation" which they seek to do in the case under consideration, it is not improbable that they would work out some scheme to carry another case to the Supreme Court and ask that branch of the Government to enact an FEPC law.

If the Supreme Court can discard segregation law, which the Congress itself has refused to do, it can also discard the constitutional safeguards which protect us from such radical monstrosities as the FEPC bills.

I hope that the Supreme Court of the United States will recognize this maneuver for what it is, and that that body will stay within its appropriate sphere with reference to this law and all other laws.

I recently quoted in a speech a statement made by Donald R. Richberg, in an address he made on July 29, 1949, to the Virginia State Bar Association at its annual meeting. I would like to repeat that quotation here. It is:

> As an active practitioner, and a prospective teacher, of constitutional law, I

must make a clear distinction between what the law is and what the law ought to be. The Supreme Court is the final arbiter or what the law is. But the people are the final arbiters of what the law ought to be and eventually shall be. If they believe that the National Government should have and exercise greater powers to promote the general welfare, they will find the way to enlarge its authority. If they believe that more local self-government is essential to their liberties and their pursuit of happiness, they will find the way to enlarge the authority of the States and the municipalities.

So long as the three departments of our Government, namely, the legislative, the executive, and the judicial, remain separate and independent, and each performs those and only those duties which devolve upon it, our Government can withstand all assaults which may be made upon it, whether from without or from within.

This is what protects us from dictatorship. This is what preserves our Government as a Government of laws and not a Government of men.

This is our system of checks and balances under which one department of Government may be restrained by the other two departments from assuming powers which do not belong to it. Time has demonstrated that the maintenance of this separate and independent status is necessary.

Any effort on the part of any one of these departments to usurp or exercise functions properly belonging to another should be promptly and effectively squelched.

It is true that there is abroad in the world today a school of thought which has attracted to itself some support in certain quarters that new laws must be devised upon every subject—that there is no wisdom or virtue in laws already in existence. This impatient school of thought must have immediate change in everything, and if Congress refuses to jump when the spur is applied, then other and quicker means must be devised to bring about the desired change.

It is to protest against such attempted action that I am making these remarks today. I would call to the attention of the House this little verse written many years ago:

> In vain we call old notions fudge
> And shape our conscience to our dealing.
> The Ten Commandments will not budge,
> And stealing will continue stealing.

There are certain fundamentals which are not affected by the passage of time. One of these is that the Supreme Court of the United States cannot discard valid existing laws. Any request by any person that the Supreme Court perform such an act is outrageous, should not be viewed with equanimity, and should not be countenanced either by the people, by the Congress, or by the Supreme Court.

There is a widespread demand throughout the country now for economy in the operation of the United States Government. Much complaint has been made that the Government has far too many people upon its various pay rolls, and that it is possible to prune these pay rolls and reduce appropriations, which in turn will result in re-

duced taxes. If the office of the Solicitor General is now staffed to the point where the Solicitor General and two of his subordinates can take time to read and digest the number of books about psychology, psychodynamic factors in racial relations, Negroes in Brazil, and enough more to fill up almost 2 pages of citations, and cite these books and writings as authority in a supposed brief of law, then I think it is high time for the Appropriations Committee and the Congress to see if that is not one place where some pruning may be done with good effect to that department, to the taxpayers, and to all concerned.

APPENDIX B

CONSTITUTION

Article I, Section 8. "The Congress shall have power * * * to regulate commerce with foreign nations, and among the several states, and with the Indian tribes;".

APPENDIX C

(R. 7–8, 223, 252)

WASHINGTON, D. C., *February 19, 1946.*

Transportation Department Circular No. 142.

Cancelling Instructions on this Subject Dated July 3, 1941, and August 6, 1942.

SUBJECT: SEGREGATION OF WHITE AND COLORED PASSENGERS IN DINING CARS.

To: Passenger Conductors and Dining Car Stewards.

Consistent with experience in respect to the ratio between the number of white and colored passengers who ordinarily apply for service in available diner space, equal but separate accommodations shall be provided for white and colored passengers by partitioning diners and the allotment of space, in accordance with the rules, as follows:

(1) That one of the two tables at Station No. 1 located to the left side of the aisle facing the buffet, seating four persons, shall be reserved exclusively for colored passengers, and the other tables in the diner shall be reserved exclusively for white passengers.

(2) Before starting each meal, draw the partition curtain separating the table in Station No. 1, described above, from the table on that side of

the aisle in Station No. 2, the curtain to remain so drawn for the duration of the meal.

(3) A "Reserve" card shall be kept in place on the left-hand table in Station No. 1, described above, at all times during the meal except when such table is occupied as provided in these rules.

(4) These rules become effective March 1, 1946.

APPENDIX D

49 U. S. C. Sec. 3, par. 1

(1) It shall be unlawful for any common carrier subject to the provisions of this part to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever: Provided however, That this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description.

U. S. GOVERNMENT PRINTING OFFICE: 1949